

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

In the Matter of [REDACTED])
)
Amendment of Part 2 of the Commission's Rules)
to Allocate Spectrum Below 3 GHz for Mobile)
and Fixed Services to Support the Introduction of)
New Advanced Wireless Services, including)
Third Generation Wireless Systems)

ET Docket No. 00-258

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To: The Commission

REPLY COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The ITFS Spectrum Development Alliance (the "Alliance") submits the following reply comments pursuant to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹

The members of the Alliance² collectively hold authorizations for Instructional Television Fixed Service ("ITFS") licenses in nearly 100 communities nationwide and currently provide a broad range of video programming and other services to educational institutions throughout those communities. The Alliance was formed in February 2000 to help foster and facilitate, on behalf of its members and all ITFS licensees, the development of advanced new two-way educational services and broadband capabilities.

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1. Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Services, including Third Generation Wireless Systems, *Notice of Proposed Rulemaking*, FCC 00-455 (rel. January 5, 2001) ("Notice").
 2. The Alliance consists of the following ITFS Licensees: Instructional Telecommunications Foundation, Inc., Hispanic Information and Telecommunications Network, Inc., North American Catholic Educational Programming Foundation, Inc., Portland Regional Telecommunications Corporation, Denver Area Educational Telecommunications Consortium, Inc., Chicago Instructional Technology Foundation, Inc., and Twin Cities Schools' Telecommunications Group, Inc.

These reply comments respond to those commenting parties who advocate the reallocation of ITFS/MDS spectrum for 3G service. No public interest reason whatsoever has been shown for such precipitous action – which would be completely contrary to established Commission policy encouraging the development of advanced fixed services in the band by existing band licensees. It would constitute perhaps the most abrupt and capricious change of policy imaginable that would irreparably harm ITFS licensees who have proceeded in reliance on these Commission policies to develop advanced fixed services for the benefit of the educational community and the public.

I. 3G Advocates Would Have The Commission Ignore Its Own Program For The Development Of Fixed Wireless Services In The ITFS/MDS Band

As shown by the comments submitted by a broad diversity of parties, the ITFS band now is heavily used for educational purposes.³ The comments further show the very substantial extent to which ITFS licensees, in partnership with others, have been working to develop the next generation of advanced wireless broadband services in the band, as envisioned and in reliance upon spectrum use policies carefully developed by the Commission over the past five years.

Some advocates of 3G services, however, erroneously attempt to paint a picture of a band that is lightly used for purposes not intended by the Commission.⁴ Their arguments are extremely superficial, factually unsupported and, in reality, beg the real question of efficient spectrum usage that serves the public interest. In adopting its plan for the development of advanced fixed services

3. Comments of Catholic Television Network, Exhibits A-H; Comments of the National ITFS Association, Appendix.

4. See Comments of Hubbard Trust, Wireless World, LLC and Centimeter Wave Television, Inc., pp. 13-14; Comments of Verizon Wireless, pp. 20-28.

in the band, the Commission obviously was well-aware of the history of its regulatory policies summarized extensively by some proponents of 3G services, such as Verizon Wireless. Taking this history into full account, the Commission has already acted to ensure the maximum utilization of the band for the delivery of advanced fixed services -- services which even Verizon Communications has recommended should be encouraged as the “primary objective of federal policy makers ...”⁵ Simply put, the claim that the ITFS band is not being efficiently used for its intended purpose is flat wrong and provides no basis to revisit or upset the Commission’s wisely thought existing plan for the development of advanced fixed services in the band.

II. Subjecting ITFS Licensees To A Forced Relocation Process Would Violate The Commission’s Long Established Relocation Policies

For almost twenty years, Commission licensee relocation policies have been founded on three fundamental principles. First, suitable substitute spectrum must be identified and made available to house the displaced service. Second, the economic costs of relocation should not be born by the exiled licensees, who are entitled to have their spectrum use activities replicated in the new band at no cost. Third, and perhaps most important, extremely strong public interest reasons must be present to mandate invocation of the extraordinary and, even in the best of circumstances, difficult relocation process. To date, the requisite strong circumstances have always flowed from the need to develop new technological services in a band occupied by an older, usually mature or antiquated service whose move will hurt no one.

5. Stop Blocking the Broadband Revolution, Ivan Seidenberg, *Wall Street Journal*, March 1, 2001, p. 822.

The relatively few parties who advocate forced relocation of ITFS/MDS band licensees utterly fail to meet their heavy public interest burden on all three counts. Mere statements, for example, without further factual information, that incumbent licensees “could be transitioned to the 3.5 GHz and reimbursed with auction proceeds,”⁶ fall far short of the information required for serious consideration of a relocation proposal. No commenting party has identified a suitable substitute block (in fact, none exists) or even begun to address the extremely difficult and probably impossible relocation issues that would be involved. The plain and undisputed fact is that, by any stretch of the imagination, no party has identified a suitable substitute band that would satisfy long established Commission relocation policies.

Nor have the few proponents of ITFS/MDS band segmentation even begun to address the matter of how relocation could be accomplished with no dislocation or harm to the displaced licensees. Relocating a discrete number of easily identifiable point-to-point microwave systems whose use is ancillary to the licensee’s business activities and not used to provide services directly to the public is one thing. The relocation process, however, was neither designed nor intended to deal with the multitude of far more difficult problems that would be involved in relocating and replicating the coverage areas of thousands of licensees providing services to the public in a complexly interwoven frequency use plan. Any transition would not be a “seamless one,” as required by Commission policy. In addition, as the comments of several parties have pointed out, it would at the minimum have the effect of delaying the deployment of advanced fixed broadband services by the displaced ITFS/MDS licensees for several years to their and the public’s great detriment.⁷

6. Comments of Ericsson, p.16 N. 33.

7. *See, e.g.*, Comments of Nortel Networks, Inc., p. 7. (“All of these consequences of relocation would substantially delay the delivery of two-way fixed broadband wireless services to the public and could

Third, and perhaps most important, this is not a situation in which an old technology is being asked to give way for the potential service and economic development benefits of a new technology to the public. Far to the contrary, as the Commission has just found in providing for the development of advanced fixed broadband services in the band by existing band licensees, the benefits of these newly authorized advanced fixed services to our country's educational and economic development is extremely substantial. The Commission's relocation policies were never intended to stretch this far to displace a new and vitally needed spectrum use. Their application in this instance would be an unwarranted and unexplainable change of policy by the Commission that would, in practical effect, convert the relocation process to a highly capricious game of musical chairs.


CONCLUSION


Many commenting parties have aptly pointed out that the regulatory uncertainty created by the Notice with respect to the future status of the ITFS/MDS bands, in and of itself, has negatively affected the development and introduction of advanced fixed broadband services in the band. The Alliance and its members have also noted this extremely serious problem. It is a condition that cannot be allowed to continue, if the previously stated policy objectives of the Commission are to be fulfilled. Based on the record developed to date, the only prudent and reasonable course of action for the Commission is to act immediately to redress the problem and give notice that the ITFS/MDS bands will not be available for use by 3G service providers.

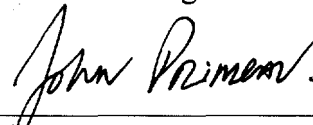
irrevocably harm the business case for the deployment of such services.”); Comments of Cisco Systems, Inc., p.2; and Comments of The Wireless Communications Association International, Inc., p. 32.

Respectfully submitted,

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